Supreme Court, U.S.
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No. 01-____

IN THE SUPREME COURT OF THE UNITED STATES

The STATE of FLORIDA,

Petitioner,

v.

GLORIA PULLEN,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

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PETITION FOR WRIT OF CERTIORARI

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45 pp

QUESTION PRESENTED

When appointed counsel concludes there is no merit to an indigent's appeal from temporary commitment for treatment of mental illness, does due process require the procedure in Anders v. California, 386 U.S. 738 (1967), be wholly followed?

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Florida Supreme Court issued its original opinion on September 13, 2001, and issued its revised opinion on November 15, 2000. (App. A & B). The revised opinion is reported as Pullen v. State, ___ So. 2d ___, 26 Fla. Law Weekly S766 (Fla. Nov. 15, 2001). It reversed the decision by the First District Court of Appeal. That court's opinion is reported as In re Interest of Pullen v. State of Florida, 764 So. 2d 704 (Fla. 1st DCA 2000) (App. C).

BASIS FOR JURISDICTION

The State of Florida seeks review of a final decision by the Florida Supreme Court, pursuant to 28 U.S.C. §1257. That decision originally issued September 13, 2001, but was revised and reissued November 15, 2001.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, which provides: "No State shall ... deprive any person of life, liberty, or property, without due process of law ...." It also involves the Florida statute under which Pullen was re-committed for mental health reasons: §394.467, Florida Statutes (App. D).

STATEMENT OF THE CASE

In April 1999, Gloria Pullen was committed to a mental institution, after a judicial hearing in which she was represented by appointed counsel.[1] In anticipation of her release that October,[2]

[1]The local Public Defender represents indigents in civil commitment

medical staff re-assessed her condition and recommended continued placement in the institution.

Pullen then received an administrative hearing pursuant to §394.467(7), Florida Statutes.[3] Again represented by counsel, she had the opportunity to present witnesses and cross-examine, and all other aspects of an evidentiary hearing.

The State adduced her medical diagnosis of "bipolar disorder, manic, with psychotic features," dementia, among others; and that her symptoms included delusions, a "lot of confusion," and poor insight. Pullen's agreement to voluntary commitment was not considered feasible, as it would allow her to leave the facility at will. Since she did not have the judgment to take her medication properly, upon leaving she would likely harm herself through neglect. Based on these facts, the administrative law judge re-committed Pullen to the same institution.

Still represented by the Public Defender, Pullen appealed to Florida's First District Court of Appeal (First DCA). After reviewing the record, her counsel filed a "no-merit" brief expressly purporting to comply with Anders v. California, 386 U.S. 738 (1967). Counsel also requested Pullen be allowed to file a pro se

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proceedings. §394.467(4), Fla. Stat.

[2]The maximum term of initial commitment or re-commitment is 6 months. *See* §394.467(6)(b), Fla. Stat. A civilly committed person must be released; transferred to "voluntary status" on request; or, if improved, placed on "convalescent status" in a "community facility" if she or he "no longer meet[s] the criteria for involuntary placement." §394.469(1), Fla. Stat. This is true, regardless of whether the original term of commitment has been completed. *See* §394.467(6)(b) ("The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary placement, unless the patient has transferred to voluntary status." [e.s.]).

[3]An administrative hearing for re-commitment follows the procedure for executive agency hearings set forth in §120.57(1), Fla. Stat., which applies when there are disputed issues of material fact. Otherwise, the process is the same as for initial commitment.

brief, but did not seek to withdraw from the case.

The First DCA authorized Pullen to file a brief herself. She did not do so. The State moved to dismiss, urging Anders was not available in an appeal from civil commitment such as Pullen's. The court agreed, and dismissed the appeal. It reasoned:

> [T]he right to counsel in civil commitment cases arises not from the Sixth Amendment but rather from the due process clause. Thus, *Anders* is not implicated in this circumstance, and where neither appointed counsel nor the pro se appellant identify any arguable issues, this court is not obligated to conduct an independent review of the record in an effort to identify any such issues. [internal citations omitted].

Pullen, 764 So. 2d at 705 (App. C, p.2).

The First DCA then adopted a procedure requiring counsel to conscientiously review the record; and, upon finding no meritorious points, move to withdraw "on that basis." As indicated, that procedure did not include court review of the record--after appointed counsel had already done so--to confirm there were no meritorious points to be raised on appeal. *See id.* (App. C, p.2).

The Florida Supreme Court reversed. Equating the liberty interest at stake in civil commitment with the liberty interest at stake in criminal prosecution, it held due process requires exact compliance with Anders in no-merit appeals from civil commitment based on mental illness:

> While the right to appointed counsel in Baker Act involuntary civil commitment proceedings is provided by Florida statute, the constitutional guarantee of due process would require no less. While the United States Supreme Court has never ruled that Anders procedures are required in the

> civil context, we agree with the courts cited above that the policies and interests served by the Anders procedure in criminal proceedings are also present in involuntary civil commitments under Florida's Baker Act, namely, that the resolution of an appeal of the commitment order be related to the merits of the appeal rather than to the individual's ability to hire private counsel. [e.s.].

Pullen v. State, __ So. 2d at __ (App. B, p.5 & 10) [other internal citations and footnotes omitted].

While denying the State's motion for rehearing, the Florida Supreme Court issued a revised opinion on November 15, 2001. The revised opinion deleted some factual representations without change to the holding. It remanded this case to the First DCA, where the State moved to abate. On January 18, 2002, the First DCA denied abatement and, following Anders, ordered supplemental briefing on two substantive issues.[4]

REASONS FOR GRANTING THE WRIT

I. Whether Due Process Requires the Procedure in Anders v. California, 386 U.S. 738 (1967), be Wholly Followed in "No-Merit" Appeals from Temporary Commitment for Mental Illness Is an Important Question of Federal Law this Court Should Settle, Thereby Resolving Conflict Among the Courts of Several States.

The Florida Supreme Court held due process requires Anders to be followed in no-merit appeals from commitment based on mental illness, despite the fact such commitment can be 6 months at most,

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[4]The first issue asked whether the State's evidence was legally sufficient to support commitment; the second, whether Pullen's failure to "preserve any [such] claim" precluded consideration of legal sufficiency on appeal.

and cannot result in adjudication of criminality. Not only wrong, the majority established a precedent with broad implications. Already an appellate court has asked the Florida Supreme Court to decide whether Anders must be followed in no-merit appeals from proceedings to terminate parental rights. *See* N.S.H. v. Dept. of Children & Family Services, __So. 2d__, 27 Fla. L. Weekly D129 (Fla. 5th DCA Jan. 4, 2002) (en banc) (certifying the question as one of great public importance).

Outside Florida, the applicability of Anders to civil appeals is a question of widespread and increasing importance. All 50 states (and the District of Columbia) have civil statutes establishing procedures for involuntary commitment of persons who are mentally ill and dangerous. (App. E.) *See* In re Leon G., 26 P.3d 481, 485 n.2 (Ariz. 2001) (noting that states providing for civil commitment of "mentally ill and dangerous persons" do not limit commitment to persons whose impairment is "volitional in nature;" and citing to statutes of 49 states and the District of Columbia). The decision below will be advanced as precedent elsewhere.

Altogether, the majority below cited 13 cases from other states (App. B, p.8-9), further indicating the question presented is not unique to Florida. Eight of the cases were decided within the last 5 years, indicating the question is not stale.

The states are divided on the question of whether Anders applies. The majority cited four decisions holding Anders does apply to "termination of parental rights or similar proceedings;"[5] and three decisions holding Anders does not.[6] It then cited four

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[5]J.K. v. Lee County Dep't of Human Res., 668 So. 2d 813 (Ala. Civ. App. 1995) (juvenile dependency proceeding); In re Keller, 486 N.E.2d 291 (Ill. App. Ct. 1985); In re Christopher B., No. L99-1065, 2000 WL 281739 (Ohio Ct. App. Mar. 17, 2000); In re D.C. & L.C., 963 P.2d 761 (Utah Ct. App. 1998).

[6]Denise H. v. Arizona Dep't of Econ. Sec., 972 P.2d 241 (Ariz. Ct. App. 1998); In re Sade C., 920 P.2d 716 (Cal. 1996); In re Harrison, 526 S.E.2d

decisions holding Anders does apply to involuntary civil commitment,[7] and two holding it does not.[8] *See* Pullen, ___ So. 2d at ____ (App. B, p.8-9). A decision by this court would bring uniformity to nationwide caselaw.

Seventeen states have adopted laws for involuntary confinement of sexual predators. (App. E).[9] That number appears to be increasing. *See* Brakel & Cavanaugh, *Of Psychopaths and Pendulums: Legal and Psychiatric Treatment of Sex Offenders in the United States*, 30 New Mex. L. Rev. 69, 75-6 nn.41-42 (2000) (noting about 15 states had enacted sexual predator confinement laws, and such legislation was pending in 12 more states). If due process requires Anders be extended, in total, to appeals from

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502 (N.C. Ct. App. 2000).

[7]In re McQueen, 495 N.E.2d 128 (Ill. App. Ct. 1986); In re E.M., No. 03-96-00703-CV, 1997 WL 217186 (Tex. App. May 1, 1997) (applying Anders without holding that it is necessary); Jeffrey M. v. Milwaukee County, 520 N.W.2d 112 (Wisc. Ct. App. 1994).

[8]In re Leon G., 26 P. 3d 481 (Ariz. 2001) (finding Anders not applicable to involuntary commitment under sexually violent predator act); In re Richard A., 771 A. 2d 572 (N.H. Ap. 2001) (not applying state alternative to Anders procedure in involuntary commitment proceedings).

[9]Constitutional challenges to two of these laws have reached this court. *See* Kansas v. Crane, 534 U.S. ___, case no. 00-957 (Jan. 22, 2002) (holding the Hendricks decision did not require a sex offender be totally unable to control his dangerous behavior in order for confinement under Kansas' sexual predators act to be constitutional); Kansas v. Hendricks, 521 U.S. 346 (1997) (concluding the same Kansas law for continued confinement of sexually violent predators is "civil" in nature, thereby rejecting double jeopardy and ex post facto challenges); Seling v. Young, 531 U.S. 250 (2001) (rejecting as applied double jeopardy and ex post facto challenges to Washington's law for confinement of sexually violent predators, on the assumption the law was civil in nature). *See also* Page v. Torrey, 210 F.3d 1136 (9th Cir. 2000) (holding that former inmate who was civilly committed under California's Sexually Violent Predators Act was not a "prisoner" within the meaning of the PLRA); Bailey v. Gardebring, 940 F.2d 1150, 1152 (8th Cir. 1991) (rejecting constitutional attacks raised by inmate who was civilly committed as sex offender while serving prison sentence).

short-term civil commitment for mental illness, then it necessarily follows that Anders must be extended to appeals from longer, more restrictive civil commitment, such as confinement of sexual predators. *See* In re Leon G., 26 P.3d at 481-2 (noting Leon G.'s appointed counsel filed an Anders brief in an appeal from Leon's adjudication as a sexually violent predator).

The practical consequence of the question presented cannot be overlooked. The First DCA adopted a procedure comporting with Anders in all respects but one--independent court review of the record. Such review is the most striking difference between appellate court response to no-merit appeals pursued by private counsel, and appellate court response to no-merit appeals when counsel is appointed. Record review is the court's most time-consuming aspect of the Anders process:

> These appeals [invoking Anders] ... require devotion of court resources and time to appeals already deemed by counsel to have no merit; they require the court to review the record much more meticulously than in appeals raising meritorious issues; and they demand that the court raise, sua sponte, any issues that it deems arguably meritorious, even when counsel has not briefed those issues.

Warner, M. *Anders in the Fifty States: Some Appellants' Equal Protection is More Equal than Others'*, 23 Fla. St. U. L. Rev. 625, 625 (1996).

The practical and legal consequences of this case center on an appellate court's duty to review the record after appointed counsel has done so. A bare majority of the Florida Supreme Court, in a truncated analysis, thought so. Because of its novelty and widespread implications, this court should settle the matter and resolve conflict among state court decisions.

II. The Florida Supreme Court's Decision Conflicts with Smith v. Robbins, 528 U.S. 259 (2000) and Mathews v. Eldridge, 424 U.S. 319 (1976).

Again, Pullen was temporarily committed for treatment of mental illness. That illness included delusions and dementia, and lack of sufficient judgment to take medication properly--a condition likely to result in harm through self-neglect. Her commitment absolutely could not, and did not, result in adjudication of criminality. Nevertheless, the majority held the exact procedure announced in Anders was necessitated by consideration of due process.

In direct contrast, this court has held that exact compliance with Anders is not constitutionally required, even in criminal appeals:

> [T]he Anders procedure is not "an independent constitutional command," but rather is just "a prophylactic framework" .... We did not say that our Anders procedure was the *only* prophylactic framework that could adequately vindicate this right; instead, by making clear that the Constitution itself does not compel the Anders procedure, we suggested otherwise. [e.s.].

Smith v. Robbins, 528 U.S. 259, 260 (2000). If strict adherence to Anders is not required by the Sixth Amendment's specific right to counsel in criminal prosecutions, then strict adherence cannot be required by the Fourteenth Amendment's more general right to due process of law. By requiring Anders be wholly followed in civil appeals such as this one, the majority opinion conflicts with Smith v. Robbins.

The majority did not compare the convalescent nature of short-

term commitment for treatment of mental illness[10] to the punitive nature of (typically much longer) incarceration for crimes. The majority did not consider the obvious: criminals generally must serve their entire sentences, regardless of any rehabilitation; whereas persons committed for treatment of mental illness must be discharged as soon as they no longer meet the statutory grounds for confinement.

Instead of making the above comparisons, the majority leapt from the undisputed point that civil commitment restricts Pullen's liberty to the tangential conclusion her appeal--conceded by appointed counsel to have no merit--should be decided on the merits rather than her ability to pay:

> [D]ue process would require no less. While the United States Supreme Court has never ruled that Anders procedures are required in the civil context, we agree with the courts cited above that the policies and interests served by the Anders procedure in criminal proceedings are also present in involuntary civil commitments under Florida's Baker Act, namely, that the resolution of an appeal of the commitment order be related to the merits of the appeal rather than to the individual's ability to hire private counsel.

Pullen, ___ So. 2d at ___ (App. B, pp.5 & 10).

With all due respect, the majority's reasoning is not logical. Pullen's right to counsel is implicated only to the extent due process

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[10]In addition to being of much less duration, confinement for treatment of mental illness is much less severe than incarceration for crime. For example, patients who are involuntarily committed for mental health reasons enjoy a number of statutory rights not available to inmates. These rights include the right to individual dignity; to skillful and humane treatment; to free and private communication with persons outside the facility; and to participate in treatment and discharge planning. *See* §394.459, Fla. Stat.

requires certain actions, when appointed counsel determines there are no meritorious points to raise on appeal. The First DCA sufficiently protected that right by requiring appointed counsel to conscientiously review the record and move to withdraw on that basis, without imposing a second review of the record on itself.

In Mathews v. Eldridge, 424 U.S. 319, 335 (1976), this court announced a three-part test to determine whether a particular proceeding affords due process. This test has been applied to a variety of procedures implicating someone's liberty interest.[11] Instead of applying the Mathews test, the majority equated all liberty interests arising from involuntary confinement--regardless of whether such confinement was based on mental illness or criminal behavior--and ignored the relatively short duration and convalescent purpose of civil commitment. In so doing, the majority opinion conflicts with Mathews.

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[11]*See e.g.*, Heller v. Doe by Doe, 509 U.S. 312, 330-34 (1993) (applying Mathews test to conclude "one aspect" of Kentucky's involuntary commitment process, which allowed participation by guardians and immediate family, did not violate procedural due process); Lassiter v. Department of Social Services of Durham County, N. C., 452 U.S. 18, 25-31 (1981) (employing the "three elements" from Mathews to conclude the due process right to counsel in termination of parental rights is not absolute, but can be determined on a case-by-case basis). *See also* Neilson v. Colgate-Palmolive Co., 199 F.3d 642, 651-4 (2d Cir. 1999) (applying the Mathews factors to uphold the procedure used by the district court to find plaintiff incompetent and appoint a guardian ad litem); U.S. v. Baker, 45 F.3d 837, 841-47 (4th Cir.), *cert. den.*, 516 U.S. 872 (1995) (balancing the Mathews factors to conclude that use of video conferencing procedure for civil commitment of inmate did not violate due process, "despite the sizable infringement upon an individual involuntarily committed"); New Mexico Dept. of Health v. Compton, 34 P.3d 1593 (N.M. 2001) (applying Mathews test to reject constitutional attacks based on relatively short delay in providing civil commitment hearing); People v. Stevens, 761 P.2d 768, 777 (Col. 1988) (rejecting constitutional challenge to civil commitment statute, while observing: "Civil commitment constitutes a severe infringement of liberty, requiring due process protection, thereby triggering analysis under the three-part Mathews test.").

CONCLUSION

This court should grant certiorari to answer the question presented by the decision of the Florida Supreme Court.

Respectfully submitted,

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February 5, 2002

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B	Decision of the Florida Supreme Court (as revised on rehearing)	11/15/2001
C	Decision of the First District Court of Appeal of Florida	06/19/2000
D	Section 394.467, Florida Statutes	N/A
E	State Laws for Involuntary Commitment	N/A

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APPENDIX A

Supreme Court of Florida

THURSDAY, NOVEMBER 15, 2001

CASE NO.: SC00-1482

Lower Tribunal No.: 1D99-4384

GLORIA PULLEN vs. **STATE OF FLORIDA**

Petitioner(s) Respondent(s)

In light of the revised opinion, the Respondent's Motion for Rehearing is hereby denied.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, LEWIS, and QUINCE, JJ., concur.
PARIENTE, J., dissents.

A True Copy
Test:

[NOTE: The Court seal and clerk's signature are not reproduced.]

Thomas D. Hall
Clerk, Supreme Court

jb
Served:

Hon. Jon S. Wheeler, Clerk
Thomas E. Warner
Charlie McCoy
Hon. Nancy A. Daniels
P. Douglas Brinkmeyer
Marcia Perlin

APPENDIX B

Supreme Court of Florida

No. SC00-1482

GLORIA PULLEN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[September 13, 2001]

REVISED OPINION

HARDING, J.

We have for review a decision of a district court of appeal that affects a class of state or constitutional officers. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

Gloria Pullen appealed an order from the Division of Administrative Hearings authorizing her continued involuntary civil commitment under Florida's Baker Act. See §§ 394.451-394.4789, Fla. Stat. (2000). Pullen's appointed counsel from the public defender's office filed an Anders[12] brief, stating that he could discern no reversible error in the proceedings below. Despite being given the opportunity to file her own pro se brief, Pullen did

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[12] Anders v. California, 386 U.S. 738 (1967).

not do so. The State filed a motion to dismiss the appeal, arguing that the Anders procedure does not apply to civil commitment proceedings. The First District Court of Appeal agreed and dismissed Pullen's appeal with a written opinion. See Pullen v. State, 764 So. 2d 704 (Fla. 1st DCA 2000).

The district court concluded that because Anders procedures are grounded in the Sixth Amendment right to counsel in criminal prosecutions while Baker Act proceedings are civil in nature and the right to counsel in such proceedings arises from the due process clause, Anders is inapplicable to appeals from involuntary civil commitment orders. The First District Court noted that the Fourth District Court had reached the same conclusion as to the inapplicability of Anders procedures in termination of parental rights (TPR) proceedings. See Ostrum v. Dep't of Health & Rehabilitative Servs., 663 So. 2d 1359 (Fla. 4th DCA 1995). The First District Court adopted the procedures outlined in Ostrum, i.e., where counsel conducts a conscientious review of the record and can find no meritorious grounds on which to appeal, counsel can move to withdraw on that basis and the court will give the pro se appellant an opportunity to file a brief; where the pro se appellant fails to do so, the case will be dismissed for failure to prosecute. See Pullen, 764 So. 2d at 705. Based on this procedure, the district court dismissed Pullen's appeal. See id.

Pullen sought review by this Court on two grounds: (1) the decision below expressly construes the due process and right to counsel provisions of the Florida and United States Constitutions; and (2) the decision expressly affects all public defenders who routinely represent indigent patients in Baker Act proceedings. See art. V, § 3(b)(3), Fla. Const. The Court granted review and heard oral argument from the parties in June 2001.

In Anders v. California, 386 U.S. 738 (1967), the United States Supreme Court addressed the duty of a court-appointed appellate counsel to prosecute a first appeal when the attorney has conscientiously determined that there is no merit to the indigent's appeal. The Supreme Court held that the procedure in such

circumstances must ensure that the indigent defendant is furnished with counsel acting in the role of an advocate and that the appeal will be given the full consideration and resolution of the matter as is received when counsel is acting in that capacity. See id. at 743. The Supreme Court concluded that a no-merit letter from counsel to the court does not suffice. Instead, the Supreme Court outlined the following procedure for appointed counsel to follow: if, after a conscientious examination of the case, counsel concludes that the case is wholly frivolous, counsel may request permission to withdraw; however, that request must be accompanied by a brief referring to anything in the record that might arguably support the appeal and a copy of the brief should be furnished to the indigent defendant to permit him or her to raise any points he chooses; the court then makes a full examination of the proceedings to determine whether the case is wholly frivolous; if so, it may grant counsel permission to withdraw and either dismiss the case or proceed to a decision on the merits; if the appeal is not found frivolous, the court must provide the indigent with counsel to argue the appeal. See id. at 744; see also In re Anders Briefs, 581 So. 2d 149, 151 (Fla. 1991) (explaining Anders procedure); State v. Wooden, 246 So. 2d 755, 757-58 (Fla. 1971) (stating that court-appointed counsel must follow Anders procedure in order to withdraw from direct appeal which he believes to be without merit).

In a recent opinion, the Supreme Court explained that the procedure outlined in Anders is not mandatory upon the states. See Smith v. Robbins, 528 U.S. 259 (2000) (holding that the Anders procedure is merely one method of satisfying the requirements of the Constitution for indigent criminal appeals). The Supreme Court explained that states may craft variations of the Anders procedure "so long as it reasonably ensures that an indigent's appeal will be resolved in a way that is related to the merit of that appeal." Id. at 276-77. In Robbins, the Supreme Court concluded that California's Wende[13] procedure, which diverged from the Anders procedure,

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[13] People v. Wende, 600 P.2d 1071 (Cal. 1979). Under the Wende

meets this standard. See id. at 279. In making this determination, the Court noted four ways in which alternative procedures have been judged inadequate: (1) if the procedure does not require either counsel or the appellate court to determine that the appeal is frivolous, but merely that the defendant is unlikely to prevail on appeal; (2) if the procedure permits an appellate court to allow counsel to withdraw and thereafter decide the appeal without appointing new counsel; (3) if the procedure permits counsel to file a no-merit letter stating only the "bare conclusion" that the appeal has no merit; and (4) if the procedure only provides for one tier of review. See id. at 761-62.

Thus, while the Supreme Court will permit variations on Anders in the criminal context, the procedures still must protect the defendant's right to appellate counsel. In a criminal context, a "no-merit" letter and withdrawal, such as the procedure used in the

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procedure, counsel, upon concluding that an appeal would be frivolous, files a brief with the appellate court that summarizes the procedural and factual history of the case, with citations to the record. Counsel also attests that he or she has reviewed the record, explained this evaluation of the case to the client, provided the client with a copy of the brief, and informed the client of the right to file a pro se supplemental brief. Counsel further requests that the court independently examine the record for arguable issues. Unlike the Anders procedure, counsel following the Wende procedure neither explicitly states that the review has led him or her to conclude that an appeal would be frivolous (although that is considered implicit) nor requests leave to withdraw. Instead, counsel is silent on the merits of the case and expresses availability to brief any issues on which the court might desire briefing. The appellate court, upon receiving a Wende brief, must conduct a review of the entire record, regardless of whether the defendant has filed a pro se brief. If the appellate court, after its review of the record pursuant to Wende, also finds the appeal to be frivolous, it may affirm. If, however, it finds an arguable (i.e., nonfrivolous) issue, it orders briefing on that issue. See id. at 1074-76; see also Robbins, 528 U.S. at 265 (explaining the Wende procedure).

instant case, would clearly not be sufficient. See id.

Thus, the real issue here is what procedure is required in the context of a civil appeal. The process to which an individual is entitled "depends on the extent to which [the] individual will be 'condemned to suffer grievous loss.' The question is not merely the 'weight' of the individual's interest, but whether the nature of the interest is one within the contemplation of the 'liberty or property' language of the Fourteenth Amendment." Morrissey v. Brewer, 408 U.S. 471, 481 (1972) (addressing the applicability of due process to parole revocation proceedings).

Clearly, an individual who faces involuntary commitment to a mental health facility has a liberty interest at stake. Accordingly, this Court has held that "[t]he subject of an involuntary civil commitment proceeding has the right to the effective assistance of counsel at all significant stages of the commitment process. By significant stages we mean all judicial proceedings and any other official proceeding at which a decision is, or can be, made which may result in a detrimental change to the conditions of the subject's liberty." In re Beverly, 342 So. 2d 481, 489 (Fla. 1977) (citation omitted); accord Jones v. State, 611 So. 2d 577, 579 (Fla. 1st DCA 1992).

In reaching the decision in the instant case, the district court relied upon the decision of the Fourth District Court in Ostrum, which involved an appeal following the termination of parental rights. See 663 So. 2d at 1360. After Ostrum's attorney filed a motion to withdraw accompanied by an Anders brief, the Department of Health and Rehabilitative Services filed a motion to dismiss the appeal based upon the Anders brief and the court's policy of expeditiously resolving cases involving the interests of children. See id. at 1361. The Fourth District Court granted the attorney's motion to withdraw and summarily affirmed the termination of parental rights order. See id. at 1361-62. The district court explained that the Anders procedures do not apply to appeals from termination of parental rights proceedings for the following reasons: (1) the right to counsel in Anders is based on

the Sixth Amendment right to counsel in criminal proceedings, while the right to counsel in civil TPR proceedings is derived from the constitutional guarantee of due process; (2) applying the full panoply of Anders procedures would delay proceedings to determine the future of the children who are the subject of the TPR proceedings; (3) Anders requires the appellate court to leave its neutral role and serve as advocate for the party whose counsel seeks to withdraw; and (4) the appellant can file a pro se brief after counsel files the motion to withdraw. See id. at 1361.

Citing the first reason in Ostrum, the district court in the instant case concluded that Anders is not applicable to Baker Act appeals because they are not criminal in nature and the right of counsel in such proceedings is derived from the constitutional right to due process rather than the Sixth Amendment right to counsel protected by Anders. See Pullen, 764 So. 2d at 705. The district court adopted the Ostrum procedure in appeals from involuntary civil commitments under the Baker Act. See id. Thus, under the procedure adopted by the Pullen court, counsel may move to withdraw on the basis that he or she has conducted a conscientious review of the record and found no meritorious grounds on which to appeal; the appellate court need not conduct an independent review of the record; and the appellant will be given an opportunity to file a pro se brief. See id.

While Anders involved an indigent criminal defendant, the United States Supreme Court expressed an overriding concern for "substantial equality and fair process" in the appellate process. Anders, 386 U.S. at 744. The Supreme Court noted that a long line of cases have addressed "discrimination against the indigent defendant on his first appeal" and concluded that "equal justice was not afforded an indigent appellant where the nature of the review 'depends on the amount of money he has.' " Id. at 741. Additionally, as the Supreme Court explained in Robbins, the line of cases dealing with an indigent's right to appellate counsel derive support from both the equal protection and due process clauses, which "as a practical matter, . . . largely converge to require that a State's procedure 'afford adequate and effective appellate review

to indigent defendants. A State's procedure provides such review so long as it reasonably ensures that an indigent's appeal will be resolved in a way that is related to the merit of that appeal.'" Robbins, 528 U.S. at 276-77 (citation omitted). Furthermore, in civil proceedings where the "individual interests at stake . . . are both 'particularly important' and 'more substantial than mere loss of money,' " due process places a higher burden on the state. Santosky v. Kramer, 455 U.S. 745, 756 (1982) (termination of parental rights); see also Addington v. Texas, 441 U.S. 418 (1979) (involuntary commitment); Woodby v. INS, 385 U.S. 276 (1966) (deportation); Schneiderman v. United States, 320 U.S. 118 (1943) (denaturalization). As this Court has explained, "[t]he deprivation of liberty which results from confinement under a state's involuntary commitment law has been termed a 'massive curtailment of liberty.' " Shuman v. State, 358 So. 2d 1333, 1335 (Fla. 1978) (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972)). "Those whom the state seeks to involuntarily commit to a mental institution are entitled to the protection of our Constitutions, as are those incarcerated in our correctional institutions." Id. As the Supreme Court warned in Anders, "[t]he constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus curiae." 386 U.S. at 744.

The United States Supreme Court has not addressed the applicability of Anders to those civil proceedings in which a state has determined that an indigent party is entitled to appointed appellate counsel. While the federal Constitution does not require the states to create appellate review, see Robbins, 528 U.S. at 755 n.5, constitutional constraints are imposed on the state when it chooses to do so. See id. at 755. Neither this Court nor the United States Supreme Court has addressed the applicability of the Anders procedures to civil proceedings such as these, i.e., where the "individual interests at stake ... are both 'particularly important' and 'more substantial than mere loss of money.' " Santosky v. Kramer, 455 U.S. at 756. In Florida, several district courts have addressed this issue and concluded that Anders does not apply to appeals in various proceedings where the right to counsel arises

from the due process clause. See, e.g., Ostrum v. Dep't of Health & Rehabilitative Servs., 663 So. 2d 1359 (Fla. 4th DCA 1995) (termination of parental rights); Jiminez v. Dep't of Health & Rehabilitative Servs., 669 So. 2d 340 (Fla. 3d DCA 1996) (same); In re J.A., 693 So. 2d 723 (Fla. 5th DCA 1997) (same); In re K.W., 779 So. 2d 292 (Fla. 2nd DCA 1998) (same); Gantt v. State, 714 So. 2d 1116 (Fla. 4th DCA 1998) (noncapital postconviction proceeding where court exercised discretion to appoint public defender); Pullen v. State, 764 So. 2d 704 (Fla. 1st DCA 2000) (involuntary civil commitment).

Other states that have addressed the application of Anders to civil proceedings have come to varying conclusions. Some have held that Anders is applicable to termination of parental rights or similar proceedings. See J.K. v. Lee County Dep't of Human Res., 668 So. 2d 813 (Ala. Civ. App. 1995) (juvenile dependency proceeding); In re Keller, 486 N.E.2d 291 (Ill. App. Ct. 1985); In re Christopher B., No. L99-1065, 2000 WL 281739 (Ohio Ct. App. Mar. 17, 2000); In re D.C. & L.C., 963 P.2d 761 (Utah Ct. App. 1998). Others have not applied Anders to such proceedings. See Denise H. v. Arizona Dep't of Econ. Sec., 972 P.2d 241 (Ariz. Ct. App. 1998); In re Sade C., 920 P.2d 716 (Cal. 1996); In re Harrison, 526 S.E.2d 502 (N.C. Ct. App. 2000). Some states have applied Anders to involuntary civil commitment proceedings. See In re McQueen, 495 N.E.2d 128 (Ill. App. Ct. 1986) (applying to involuntary civil commitment); In re E.M., No. 03-96-00703-CV, 1997 WL 217186 (Tex. App. May 1, 1997) (applying Anders analysis by analogy to involuntary civil commitment without holding that it is necessary); Jeffrey M. v. Milwaukee County, 520 N.W.2d 112 (Wisc. Ct. App. 1994) (applying to involuntary civil commitment). Other states have not. See In re Leon G., 26 P. 3d 481, (Ariz. 2001) (finding Anders not applicable to involuntary commitment under sexually violent predator act); In re Richard A., 771 A. 2d 572, (N.H. Apr. 2001) (not applying state alternative to Anders procedure in involuntary commitment proceedings).

In most cases where Anders has not been extended to civil proceedings, the courts have noted that Anders derives from the

constitutional right to counsel in criminal proceedings. See, e.g., In re Leon G., 26 P. 3d at 483-84, ("The right to full review of the record on appeal when appointed counsel files an Anders brief, attached as it is to the Sixth Amendment right to counsel in criminal cases, does not apply in civil proceedings."); Denise H., 972 P.2d at 243 ("The right to file an Anders brief derives from the Sixth Amendment right to counsel, which applies to persons 'accused' in 'criminal prosecutions.' "); County of Kern v. Dillier, 82 Cal. Rptr. 2d 318, 322 (Cal. Ct. App. 1999) (stating that "Anders's 'prophylactic' procedures are designed solely to protect the indigent criminal defendant's right . . . to the assistance of appellate counsel appointed by the state" and thus are not applicable to termination of parental rights proceedings); In re Richard A., 771 A. 2d at 576 (holding that New Hampshire's alternative to Anders procedures, which are required in criminal cases, do not apply to an involuntary civil commitment case because individuals subject to civil commitment "are not entitled to the same level of due process as individuals subject to incarceration for criminal wrongdoing"). Conversely, those courts that have applied Anders-type procedures to civil proceedings have focused on the similarities between the proceedings and the rights at issue. See, e.g., In re Keller, 486 N.E.2d at 292 (finding that application of Anders procedure in appeal of termination of parental rights puts "indigent appellants on the same footing as those able to afford private counsel and accomplishes the constitutional or statutory purpose for their appointment"); In re McQueen, 495 N.E.2d at 129 (same as to involuntary civil commitment proceedings); In re D.C. & L.C., 963 P.2d at 763-64 (noting that the right to counsel is statutorily guaranteed in appeal of termination of parental rights, that court-appointed counsel owes same duties to client as in criminal proceeding, and that counsel faces same ethical dilemma between representation of client and bar rule prohibiting frivolous claims).

While the right to appointed counsel in Baker Act involuntary civil commitment proceedings is provided by Florida

statute,[14] the constitutional guarantee of due process would require no less. See Lynch v. Baxley, 386 F. Supp. 378, 388 (M.D. Ala. 1974) (stating that due process applies to involuntary civil commitments and requires that the person who is the subject of the commitment proceeding be represented by counsel, appointed if necessary); In re Beverly, 342 So. 2d 481, 489 (Fla. 1977) ("The subject of an involuntary civil commitment proceeding has the right to the effective assistance of counsel at all significant stages of the commitment process."). While the United States Supreme Court has never ruled that Anders procedures are required in the civil context, we agree with the courts cited above that the policies and interests served by the Anders procedure in criminal proceedings are also present in involuntary civil commitments under Florida's Baker Act, namely, that the resolution of an appeal of the commitment order be related to the merits of the appeal rather than to the individual's ability to hire private counsel. Cf. Robbins, 528 U.S. at 276-77 (stating that due process requires state appellate process to provide fair opportunity for indigent's appeal to be resolved on the merits). Further, the curtailment of the fundamental right of liberty is implicated in both criminal proceedings and involuntary civil commitments. See Shuman v. State, 358 So. 2d 1333, 1335 (Fla. 1978).

The State noted in both its brief and at oral argument that civil commitment hearings under the Baker Act are "usually brief and factually straightforward" and "[v]ery rarely is the person's mental illness contested." Instead, the State contends, "the most common points on appeal" assert that evidence as to the person's likelihood to harm himself or others does not meet the clear and convincing standard. Thus, we do not agree with the State's contention that the independent appellate court review which is part of the Anders-type procedure will cause an undue burden to the court or result in unnecessary delay.

While we determine that the Anders procedure should apply

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[14] See § 394.467(4), Fla. Stat. (2000).

to involuntary civil commitments, we are concerned that it may be a hollow remedy for those appellants who pursue an Anders appeal. At oral argument, the parties recognized that under the present time frame the appeals process often exceeds the six-month commitment period. See Fla R. App. P. 9.110 (governing appeal proceedings to review final orders of lower tribunals, including the time for filing the notice of appeal, preparation of the record by the clerk, and serving the initial brief), 9.210(f) (governing the time for service of answer and reply briefs). In fact, this delay would also occur in cases where counsel files an arguably meritorious appeal of a civil commitment order under the Baker Act.

In light of this time frame, we request the Appellate Rules Committee to consider the adoption of expedited procedures for the appeal of civil commitment orders under the Baker Act. Procedures that the committee should consider include, but are not limited to, an expedited time frame for the filing of the notice of appeal, a shortened time for the serving of briefs, and a provision requiring the appointment of a guardian ad litem.

For the reasons expressed above, we quash the decision of the First District Court of Appeal and remand this case to the district court with directions to consider Pullen's appeal under the Anders procedures outlined in this opinion.

It is so ordered.

SHAW, ANSTEAD, and LEWIS, JJ., concur.
PARIENTE, J., concurs in part and dissents in part with an opinion, in which WELLS, C.J., and QUINCE, J., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

PARIENTE, J., concurring in part and dissenting in part.

I wholeheartedly concur in the majority's concern over the

need for expedited procedures for appeal of civil commitment orders under the Baker Act and, in particular, a provision requiring the appointment of a guardian ad litem. I do not, however, concur with the extension of the Anders procedure[15] to Baker Act civil commitment proceedings, especially after appellate counsel has certified that he or she has conducted a conscientious review of the record and could find no meritorious grounds on which to appeal. The majority would have this good faith certification by appellate counsel trigger a responsibility on the part of the appellate court "to conduct a full and independent review of the record to discover any arguable issues apparent on the face of the record" as is now required by our Anders procedure in criminal appeals. See In re Anders Briefs, 581 So. 2d 149, 151 (Fla. 1991). Instead, I would find any additional review by the appellate court to perform an independent verification that no meritorious points exist to be unnecessary in light of the good faith certification procedure.

Indeed, I have substantial doubts about the necessity of our current Anders procedure in the criminal context.[16] I have never understood the logic of requiring appellate courts to provide a heightened review for those appeals that are the least meritorious by placing on the appellate courts the responsibility of searching the record for potential errors.[17]

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[15] "Anders procedure" refers to the procedure described in Anders v. California, 386 U.S. 738 (1967), and elaborated in our decision of In re Anders Briefs, 581 So. 2d 149 (Fla. 1991).

[16] For a discussion of the shortcomings of the Anders approach, see Martha C. Warner, Anders in the Fifty States: Some Appellants' Equal Protection is More Equal than Others', 23 Fla. St. U. L. Rev. 625 (1996).

[17] This procedure applies only to court-appointed lawyers--either appellate public defenders or conflict counsel. However, privately retained lawyers are ethically bound not to prosecute an appeal that is wholly frivolous.

Given these reservations about our current Anders procedures, in my opinion, extending the Anders procedure to Baker Act proceedings is an unnecessary and unwarranted use of judicial resources. Further, we have no information as to what effect extending Anders to Baker Act civil commitment appeals would have on the appellate workload.

I hasten to add that I do not minimize the significant deprivation of liberty resulting from an involuntary commitment. In my opinion, however, the very safeguards attendant to the Baker Act proceedings, including the right to appellate review, the appointment of appellate counsel to determine any procedural or substantive irregularities in the commitment, and the maximum duration of a six-month period of commitment before another review, comport with due process. Considering the three-factor test of Mathews v. Eldridge, 424 U.S. 319, 335 (1976), I would find no due process deprivation.[18] I would rely instead on the certification of counsel. Moreover, rather than extending Anders to Baker Act civil commitment proceedings, I would consider revisiting the wisdom and necessity of our current Anders procedures in criminal cases.

WELLS, C.J., and QUINCE, J., concur.

Application for Review of the Decision of the District Court of Appeal -
Class of Constitutional Officers

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[18] Eldridge sets forth a three-factor test to determine whether the Due Process Clause of the Fourteenth Amendment mandates additional procedures. It instructs that we look to (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation through the procedures used and probable value of substitute procedures; and (3) the Government's interest, including the fiscal and administrative burden of substitute procedures. See 424 U.S. at 335.

First District - Case No. 1D99-4384

Nancy A. Daniels, Public Defender, and P. Douglas Brinkmeyer, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and Charlie McCoy, Assistant Attorney General, Tallahassee, Florida,

for Respondent

Julianne M. Holt, Public Defender, and Marcia Perlin, Assistant Public Defender, Thirteenth Judicial Circuit, Tampa, Florida,

for Florida Public Defender Association, Inc., Amicus Curiae

APPENDIX C

District Court of Appeal First District of Florida

In the Interest of Gloria PULLEN, Appellant,
v.
STATE of Florida, Appellee.

No. 1D99-4384.

June 19, 2000.

Nancy Daniels, Public Defender, and P. Douglas Brinkmeyer, Assistant Public Defender, Tallahassee, for appellant.

Robert A. Butterworth, Attorney General, and Charlie McCoy, Assistant Attorney General, Tallahassee, for appellee.

PER CURIAM.

Gloria Pullen seeks review of an order authorizing her continued involuntary civil commitment under the Baker Act. In purported compliance with *Anders v. California,* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), her appointed counsel has filed an initial brief indicating that he can discern no reversible error in the proceedings below. Despite being afforded the opportunity to do so, Ms. Pullen has not filed a pro se initial brief. Noting that neither Ms. Pullen nor her appointed counsel have identified any arguable issue of reversible error, the state has moved to dismiss this appeal, arguing that the *Anders* procedure does not apply. We agree and dismiss the appeal accordingly.

In *Ostrum v. Department of Health & Rehabilitative Services,* 663 So.2d 1359 (Fla. 4th DCA 1995), the court addressed the question of whether the full panoply of *Anders* procedures should attend an appeal of an order of termination of parental rights ("TPR"). In so doing, the court noted that the procedures outlined

in *Anders* are grounded on the Sixth Amendment right to counsel in criminal prosecutions, and concluded that because TPR cases are civil in nature and the right to counsel therein arises from due process considerations, *Anders* is not applicable. We reach the same conclusion with respect to Baker Act appeals. Like TPR cases, the right to counsel in civil commitment cases arises not from the Sixth Amendment but rather from the due process clause. *See Jones v. State*, 611 So.2d 577 (Fla. 1st DCA 1992); *see also In re Beverly*, 342 So.2d 481 (Fla.1977). Thus, *Anders* is not implicated in this circumstance, and where neither appointed counsel nor the pro se appellant identify any arguable issues, this court is not obligated to conduct an independent review of the record in an effort to identify any such issues.

Having determined that *Anders* does not apply in appeals from involuntary commitment orders, we hereby adopt the procedure outlined in *Ostrum* for purposes of processing cases of this nature. That is, where counsel in a civil commitment proceeding conducts a conscientious review of the record and can find no meritorious grounds on which to appeal, it will be sufficient for counsel to move to withdraw on that basis. We will then afford the pro se appellant the opportunity to file a brief, and if appellant fails to do so, the appeal will be dismissed for failure to prosecute. If appellant does file a brief, the case will proceed as any ordinary appeal, subject to our consideration of the propriety of summary affirmance under rule 9.315.

In this case, appellant's counsel has failed to identify any potentially meritorious issues and appellant herself has already declined the court's invitation to file a pro se initial brief. Accordingly, we hereby dismiss this appeal.

BARFIELD, C.J., BOOTH and WOLF, JJ., concur.

APPENDIX D

394.467. Involuntary placement

(1) Criteria.--A person may be involuntarily placed for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she is mentally ill and because of his or her mental illness:

1. a. He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or

b. He or she is unable to determine for himself or herself whether placement is necessary; and

2. a. He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or

b. There is substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

(2) Admission to a treatment facility.--A patient may be retained by a receiving facility or involuntarily placed in a treatment facility upon the recommendation of the administrator of a receiving facility where the patient has been examined and after

adherence to the notice and hearing procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary placement are met. However, in counties of less than 50,000 population, if the administrator certifies that no psychiatrist or clinical psychologist is available to provide the second opinion, such second opinion may be provided by a licensed physician with postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Such recommendation shall be entered on an involuntary placement certificate, which certificate shall authorize the receiving facility to retain the patient pending transfer to a treatment facility or completion of a hearing.

(3) Petition for involuntary placement.--The administrator of the facility shall file a petition for involuntary placement in the court in the county where the patient is located. Upon filing, the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located. No fee shall be charged for the filing of a petition under this subsection.

(4) Appointment of counsel.--Within 1 court working day after the filing of a petition for involuntary placement, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(5) Continuance of hearing.--The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of

the hearing. The continuance shall be for a period of up to 4 weeks.

(6) Hearing on involuntary placement.--

(a) 1. The court shall hold the hearing on involuntary placement within 5 days, unless a continuance is granted. The hearing shall be held in the county where the patient is located and shall be as convenient to the patient as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.

2. The court may appoint a master to preside at the hearing. One of the professionals who executed the involuntary placement certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall provide for one. The independent expert's report shall be confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b) If the court concludes that the patient meets the criteria for involuntary placement, it shall order that the patient be transferred to a treatment facility or, if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate receiving or treatment facility, or that the patient receive services from a receiving or treatment facility, on an involuntary basis, for a period of up to 6 months. The order shall specify the nature and extent of the patient's mental illness. The facility shall discharge a

patient any time the patient no longer meets the criteria for involuntary placement, unless the patient has transferred to voluntary status.

(c) If at any time prior to the conclusion of the hearing on involuntary placement it appears to the court that the person does not meet the criteria for involuntary placement under this chapter, but instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, then the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings shall be governed by chapter 397.

(d) At the hearing on involuntary placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(e) The administrator of the receiving facility shall provide a copy of the court order and adequate documentation of a patient's mental illness to the administrator of a treatment facility whenever a patient is ordered for involuntary placement, whether by civil or criminal court. Such documentation shall include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a clinical psychologist or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied at the same time by adequate orders and documentation.

(7) Procedure for continued involuntary placement.--

(a) Hearings on petitions for continued involuntary placement shall be administrative hearings and shall be conducted in accordance with the provisions of s. 120.57(1), except that any order entered by the hearing officer shall be final and subject to

judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity shall be governed by the provisions of s. 916.15.

(b) If the patient continues to meet the criteria for involuntary placement, the administrator shall, prior to the expiration of the period during which the treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary placement. The request shall be accompanied by a statement from the patient's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was involuntarily placed, and an individualized plan of continued treatment. Notice of the hearing shall be provided as set forth in s. 394.4599. If at the hearing the hearing officer finds that attendance at the hearing is not consistent with the best interests of the patient, the hearing officer may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath, and the proceedings must be recorded. > [FN1]

(c) Unless the patient is otherwise represented or is ineligible, he or she shall be represented at the hearing on the petition for continued involuntary placement by the public defender of the circuit in which the facility is located.

(d) If at a hearing it is shown that the patient continues to meet the criteria for involuntary placement, the administrative law judge shall sign the order for continued involuntary placement for a period not to exceed 6 months. The same procedure shall be repeated prior to the expiration of each additional period the patient is retained.

(e) If continued involuntary placement is necessary for a patient admitted while serving a criminal sentence, but whose sentence is about to expire, or for a patient involuntarily placed while a minor but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an

order authorizing continued involuntary placement.

(f) If the patient has been previously found incompetent to consent to treatment, the hearing officer shall consider testimony and evidence regarding the patient's competence. If the hearing officer finds evidence that the patient is now competent to consent to treatment, the hearing officer may issue a recommended order to the court that found the patient incompetent to consent to treatment that the patient's competence be restored and that any guardian advocate previously appointed be discharged. > [FN2]

(8) Return of patients.--When a patient at a treatment facility leaves the facility without authorization, the administrator may authorize a search for the patient and the return of the patient to the facility. The administrator may request the assistance of a law enforcement agency in the search for and return of the patient.

APPENDIX E

State Laws for Involuntary Commitment

STATE	Dangerous Mental Illness*	Predatory Sexual Offenses**
Alabama	§22-52-1.1	
Alaska	§47.30.700 & .915(12)	
Arizona	§36-540	§36-3701 & -3707
Arkansas	§20-47-202 & -205	
California	Welfare & Inst. Code §5008, §5150, §5200	Welfare & Inst. Code §6600
Colorado	§27-10-102 & -106	
Connecticut	§17a-458(a) & -498	
Delaware	16 Del. Code §5001(1)	
D.C.	§21-501(5) & -541	
Florida	§394.455(18) & .467	§394.910-.912
Georgia	§37-3-1(9.1) & (11)	
Hawaii	§334-60.2	
Idaho	66-317(1) & -322	

STATE	Dangerous Mental Illness*	Predatory Sexual Offenses**
Illinois	405 ILCS 5/1-119	725 ILCS 207/5
Indiana	§§12-26-6-8 to 12-26-7-1	
Iowa	§229.1.8	§229A.1
Kansas	59-2946(f)	§59-29a01
Kentucky	§202A.011(9) & .026	
Louisiana	§28:2(3) & §28:53	
Maine	34-B MRSA, §3801.5 & §3861	
Maryland	Md. Code, Health-Gen., §10-101(f) & -614	
Massachusetts	ch. 123 §§1 & 7	ch. 123A
Michigan	§§330.1400 & .1401	
Minnesota	§245.462.20 & §253B.07	§253B.02 & .185
Mississippi	§41-21-61(e) & -67	
Missouri	§632.005 & .350	§632.475 & .480
Montana	§53-21-102(7)	
Nebraska	§83-1001 & -1009	

STATE	Dangerous Mental Illness*	Predatory Sexual Offenses**
Nevada	43A.115 & .210; & ch. 590 (2001)	
New Hampshire	§135-C:2.X & C:27	
New Jersey	§30:4-27.2.r & -27.3	§30:4-27.24 & .25
New Mexico	§43-1-1 & -3.0	
New York	Mental Hyg. Law §9.01 & §9.27	
North Carolina	§122C-3(21) & -270	
North Dakota	Cent. Code §25-03.1-02.10 & -03.1-09	§25-03.3-01
Ohio	§5122.01(a) & .05	
Oklahoma	43A §1-103(n) & -106	
Oregon	§426.005(1)(d), .095 & .110	§426.005
Pennsylvania	50 PCons.S §7103	
Rhode Island	§40.1-5-5(8) & §40.1-5-8	
South Carolina	§44-17-580 & §44-23-10(1)	§44-48-10, -20, & -30
South Dakota	27A-1-1(18) & -2	

STATE	Dangerous Mental Illness*	Predatory Sexual Offenses**
Tennessee	§33-1-101(14) & §33-6-401	
Texas	Health & Safety Code §571.003(14) & §574.001	Health & Safety Code §841.061-.003
Utah	§62A-12-202(8) & -232	
Vermont	18 VSA §7101(14) & §7612	
Virginia	§37.1-1 &-134.21	§37.1-70.6
Washington	§71.05.020(20)	§71.09.010
West Virginia	§27-1 & -12, §27-5-2 & ch. 194 (2001)	
Wisconsin	§51.01(13) & §51.20	§980.01
Wyoming	§25-10-101(a) & -109	

*For most states, the cite is to the statutory provision which describes the criteria for commitment, or defines mental "illness" or "disorder."

**For most states, the cite includes the statutory provision which defines sexually violent" offense or similar term.

(2)

Supreme Court, U.S.
FILED
MAY 9 2002
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No. 01-1180

IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF FLORIDA,

Petitioner,

v.

GLORIA PULLEN,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

---

FLORIDA'S REPLY TO PULLEN'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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9 pp

QUESTION PRESENTED

When appointed counsel concludes there is no merit to an indigent's appeal from temporary commitment for treatment of mental illness, does due process require the procedure in Anders v. California, 386 U.S. 738 (1967), be wholly followed?

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I. Whether Due Process requires the procedure in Anders v. California, 386 U.S. 738 (1967), be wholly followed in "no-merit" appeals from temporary commitment for mental illness is an important question of federal law this court should settle, thereby resolving conflict among the courts of several states. 1

II. The Florida Supreme Court's decision conflicts with Smith v. Robbins, 528 U.S. 259 (2000), and Mathews v. Eldridge, 424 U.S. 319 (1976). ... 4

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U.S. Const. ..... *passim*

FLORIDA'S REPLY TO PULLEN'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The decision under review is now reported as Pullen v. State, 802 So.2d 1113 (Fla. 2001).

REASONS FOR GRANTING THE WRIT

I. Whether Due Process Requires the Procedure in Anders v. California, 386 U.S. 738 (1967), Be Wholly Followed in "No-merit" Appeals from Temporary Commitment for Mental Illness Is an Important Question of Federal Law this Court Should Settle, Thereby Resolving Conflict among the Courts of Several States.

Pullen advances two reasons for this Court to deny certiorari. First and foremost, she contends the decision below was grounded on "policy," to which this Court must defer based on considerations of federalism. Second, she tersely urges the jurisdictional basis for review by the Florida Supreme Court provides independent state law grounds for the majority opinion.

Before the Florida Supreme Court, Pullen argued that due process required a "full" Anders-type process--including independent appellate court review of the record--be required in no-merit appeals from temporary civil commitment orders.[1] While

[1]Pullen made the same argument before the intermediate appellate court, the First District Court of Appeal. That court disagreed, holding that because the right to counsel in civil commitment arises from the Due Process Clause, Anders was not implicated. *See* In re Interest of Pullen v. State of Florida, 764 So. 2d 704, 705 (Fla. 1st DCA 2000) (Pet. App. C., p.2).

occasionally bolstering her position by invoking "public policy," Pullen always presented the issue as one of procedural fairness in light of the liberty interest at stake.

It was in this context that a bare majority of the Florida Supreme Court reversed the First District Court of Appeal outright. Without mentioning the Florida Constitution, the majority reasoned:

> The process to which an individual is entitled depends on the extent to which [the] individual will be condemned to suffer grievous loss. The question is not merely the weight of the individual's interest, but whether the nature of the interest is one within the contemplation of the liberty or property language of the Fourteenth Amendment. [e.s.; internal quote, and cite omitted].

Pullen, 802 So.2d at 1116 (Pet. App. B, p.5).[2] Later, and immediately before the "policies and interests" language relied upon by Pullen, the majority also said:

> While the right to appointed counsel in Baker Act involuntary civil commitment proceedings is provided by Florida statute, the constitutional guarantee of due process would require no less. [e.s.; internal quote and cite omitted].

Id. at 1119 (Pet. App. B, p.9-10).

Read together, the quoted passages show the majority's concern for policy is inseparable from its perception of the due process demands of the Fourteenth Amendment. The only fair

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[2]Citation to documents appended to Florida's petition for certiorari will be in the form (Pet. App. __, p.__).

reading of the majority opinion is that it holds the Due Process Clause of the Fourteenth Amendment requires Anders be followed in total. For Pullen to argue otherwise flies in the face of the majority's rationale, the history of the case, and her own position before the Florida Supreme court and the First District Court of Appeal.

The majority did not mention Mathews v. Eldridge, 424 U.S. 319 (1976), much less apply its three-part test; a failure noted by the dissent. *See* Pullen, 803 So.2d at 1121 ("Considering the three-factor test of Mathews v. Eldridge, 424 U.S. 319, 335 (1976), I would find no due process deprivation." [footnote omitted]) (Pariente, J., concurring and dissenting in part; in which Wells, C.J., and Quince, J., concur). The majority's failure to apply Mathews would not have been noted had the decision below actually turned on something other than due process. Such failure shows the majority misapprehended the requisites of the Due Process Clause, and that review by this Court is warranted.

Thus, in the face of the majority's actual words, Pullen asserts that the "Florida Supreme Court made a policy decision[.]" [e.s.] (Pullen resp., p.2). This contention ignores the majority's express reliance on "due process," as discussed above. [3] The only ground for the majority's holding is the Due Process Clause of the Fourteenth Amendment. That holding is not a statement of policy, but an incorrect ruling on a federal question this Court should address.

Pullen also urges the majority decision rests on independent state grounds, simply because the Florida Supreme Court's jurisdictional basis for review was the effect of the intermediate appellate decision on a class of state or constitutional officers.

---

[3]Pullen belittles Florida's reliance on the "novelty" of the federal question presented by the decision below. (Pullen resp., p.6). The novelty arises from the fact the question--applicability of Anders to civil commitment--is one of first impression, not that it is unique to Florida.

(Pullen resp., p.7 & n.2). The jurisdictional basis for review by the Florida Supreme Court has nothing to do with the substance of the majority's decision, which required--as a matter of due process--such officers to apply Anders to appeals from civil commitment based on mental health.

II. The Florida Supreme Court's Decision Conflicts with Smith v. Robbins, 528 U.S. 259 (2000) and Mathews v. Eldridge, 424 U.S. 319 (1976).

Florida relies on the assertion of conflict set forth in its petition. The majority found the procedure adopted by the First District Court of Appeal to be insufficient under the Due Process Clause; and, in conflict with Smith v. Robbins, required Anders be followed in total. Instead of applying Mathews, the majority relied on some undescribed rationale of its own, necessarily creating conflict with that decision.

CONCLUSION

Pullen's opposition to certiorari simply ignores the federal question presented by the decision below. Based on Florida's argument in its petition and this reply, the Court should grant certiorari to review the decision of the Florida Supreme Court.

Respectfully submitted,

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Case No. 01-1180 (3)

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

STATE OF FLORIDA, Petitioner

vs.

GLORIA PULLEN, Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Where appointed counsel concludes there is no merit to an indigent's appeal from temporary commitment for treatment of mental illness, does due process require the procedure in Anders v. California, 386 U.S. 738 (1967), be wholly followed?

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OPINION BELOW

The Florida Supreme Court's opinion in this case, Pullen v. State, 802 So. 2d 1113 (Fla. 2001), is reproduced as Appendix A.

JURISDICTION

Petitioner seeks this Court's Certiorari jurisdiction pursuant to 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner relies on the United States Constitution, Amendment XIV.

Respondent relies on Article I, §9, Florida Constitution:

> Section 9. Due Process. — No person shall be deprived of life, liberty or property without due process of law ... .

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's recitation of the procedural history of this case.

REASONS FOR NOT GRANTING THE WRIT

ISSUE I

PRINCIPLES OF FEDERALISM ALLOW THE SEVERAL STATES TO DETERMINE WHAT PROCEDURES ARE REQUIRED IN ORDER TO ENSURE DUE PROCESS IN REVIEWING THE APPEAL FROM AN ORDER OF INVOLUNTARY COMMITMENT.

The Florida Supreme Court made a policy decision that requires a procedure for the intermediate appellate courts of Florida to follow when reviewing on direct appeal an order of involuntary commitment. Specifically, that court held that the appellate court must treat an appeal in which a no-merit brief is filed in accord with Anders v. California, 386 U.S. 738 (1967). The Florida Supreme Court's decision is based on principles of federalism and state policy. The State of Florida has provided no compelling reason for this Court to exercise its discretionary jurisdiction.

The state has cited cases in which the intermediate appellate courts of Florida, and various courts of other states, have addressed the question of whether the Anders procedure applies to other types of civil appeals. Petition at 5-7. What the state fails to recognize is that the states are free

under Anders to develop their own methods of review, and this Court should have no role in the matter.

In State v. Causey, 503 So. 2d 321 (Fla. 1987), the Florida Supreme Court was faced with the question of what procedures were appropriate when the intermediate appellate court discovered a reversible error in an Anders brief in a criminal appeal. That court determined, as a matter of a state policy of fairness, that the appellate court was required to request supplemental briefs from both the indigent appellant and the state prior to ruling on the merits of the appeal:

> In the case, sub judice, the First District Court of Appeal reversed Causey's conviction without allowing either party to brief the issue. Both parties agree, as do we, that this was error. Except in extreme or extraordinary circumstances, the district court should request that briefs be submitted on the issues raised by the court before the court renders its opinion. This would present both sides with the fair opportunity to be heard.

503 So. 2d at 323. There is nothing in Anders which requires the appellate court to give the state an opportunity to address potential reversible error. Yet, the Florida Supreme Court determined as a matter of state policy that

fairness required that procedure.[1] That court made a similar policy decision in the instant case.

In Smith v. Robbins, 528 U.S. 259, 272 (2000), this Court held that the states are free to establish procedures to process an indigent's direct criminal appeal as a matter of right, when counsel files a no-merit brief. This Court has an "established practice of permitting the States, within the broad bounds of the Constitution, to experiment with solutions to difficult questions of policy." Smith v. Robbins, 528 U.S. at 272.

In Smith v. Robbins, this Court announced a "hands-off" policy with regard to how the states conduct their business: "[I]t is more in keeping with our status as a court, and particularly with our status as a court in the federal system, to avoid imposing a single solution on the States from the top down." Smith v. Robbins, 528 U.S. at 275.

In Pennsylvania v. Finley, 481 U.S. 551, 555 (1987), this Court stated that the Anders procedure is not "an independent constitutional command," but rather only a "prophylactic framework." In Griffin v. Illinois, 351 U.S. 12 (1956), this Court expressly disclaimed any rule-making authority over the states in their treatment of indigent appeals.

---

[1]Surely the state would not want to give up its opportunity to be heard in *Anders* appeals because there is no federal right to be heard.

In Martinez v. Court of Appeal of California, 528 U.S. 152, 163 (2000), this Court held that the principles of federalism allow the states to develop their own rules to permit an appellant in a criminal case to represent himself on appeal in state court. Likewise, in Addington v. Texas, 441 U.S. 418, 431-32 (1979), this Court held that the principles of federalism allow the states to develop their own burden of proof for the standard of civil commitment:

> That some states have chosen--either legislatively or judicially--to adopt the criminal law standard gives no assurance that the more stringent standard of proof is needed or is even adaptable to the needs of all states. The essence of federalism is that states must be free to develop a variety of solutions to problems and not be forced into a common, uniform mold. As the substantive standards for civil commitment may vary from state to state, procedures must be allowed to vary so long as they meet the constitutional minimum. (emphasis added; footnote 5 omitted).

Here, the Florida Supreme Court has developed its own solution to the problem of how to review no-merit indigent civil commitment appeals, and this Court must permit it and the other states to do so, because such a procedure does not offend the federal constitution.

One intermediate appellate court judge in Florida has recognized that Florida has required greater protections for the appellant in an indigent criminal appeal than other states. Warner, Martha C., *Anders in the Fifty States: Some Appellants' Equal Protection is More Equal than Others'*, 23 FLA. ST. U. L. REV. 625 (1996). But that does not offend the federal constitution. The states are free under the principles of federalism to adopt their own procedures. Every state has a due process clause in its state constitution, and the fact that Florida has chosen a certain procedure under Article I, §9, Florida Constitution, to handle its indigent criminal or civil appeals is of no concern to this Court.

The state has invited this Court to accept review of this case "[b]ecause of its novelty and widespread implications." Petition at 7. It is hard to understand how a novel issue could have a widespread effect on other issues among other states. If this issue is so novel, this Court has no business reviewing it under the principles of federalism discussed above. Time will tell whether a federal constitutional controversy warranting this Court's attention develops. Until then, certiorari review at this point is premature.

The state has invited this Court to accept review of this case to "resolve conflict among state court decisions." Petition at 7. Again, this Court has announced a policy of not delving into the states' method of conducting appellate review of their own cases. The state has set forth no compelling reason for this Court to depart from its established precedent.

Moreover, the Florida Supreme Court's decision rests on adequate and independent state grounds. That court exercised its discretionary jurisdiction to review the decision of the intermediate state court because it affected a class of state officers,[2] not because it affected the federal due process rights of Respondent.

The decision also rests on its 24-year-old opinion in In re Beverly, 342 So. 2d 481 (Fla. 1977), in which the Florida Supreme Court addressed for the first time the relatively new state civil commitment statute. The court found that the statute was constitutional, rejecting vagueness and overbreadth attacks. The court also found that there was a difference of opinion among the states regarding the burden of proof for commitment –

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[2]Although Respondent sought review on two grounds, 802 So. 2d at 1115, the Florida Supreme Court granted review on a clause of the state constitution which is peculiar to Florida: "We have for review a decision of a district court of appeal that affects a class of state or constitutional officers. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const." 802 So. 2d at 1114.

reasonable doubt or clear and convincing evidence – and chose the latter as a matter of state policy.

The Florida Supreme Court in the instant case examined the conflicting decisions from other states regarding the procedure to be used in reviewing indigent civil appeals and decided as a matter of state policy that the Anders procedure was appropriate for these cases:

> While the United States Supreme Court has never ruled that Anders procedures are required in the civil context, we agree with the courts cited above that the policies and interests served by the Anders procedure in criminal proceedings are also present in involuntary civil commitments under Florida's Baker Act, namely, that the resolution of an appeal of the commitment order be related to the merits of the appeal rather than to the individual's ability to hire private counsel.

802 So. 2d at 1119; underlined emphasis added.

Thus, even though the Florida Supreme Court discusses the Anders procedure in the context of civil appeals, its decision rests upon its view of the proper policies and interests for only the State of Florida. Its decision is based on adequate and independent state grounds, and the independent state grounds are adequate to support the decision of the Florida Supreme Court. Thus, this Court has no jurisdiction to accept review.

ISSUE II

THE DECISION BELOW IS NOT IN CONFLICT WITH SMITH v. ROBBINS, 528 U.S. 259 (2000), OR MATHEWS v. ELDRIDGE, 524 U.S. 319 (1975).

The state claims conflict with Smith v. Robbins. Petition at 8-9. That case, as noted above, held that the states are free to establish procedures to process an indigent's direct criminal appeal as a matter of right, when counsel files a no-merit brief. As noted above, the Florida Supreme Court's decision rests upon its policy decision. The opinion of the Florida Supreme Court did exactly the same for an indigent's direct civil appeal as a matter of right after an involuntary placement under section 394.467. Florida Statutes. Since both decisions afford the indigent persons due process of law in their criminal or civil appeals, they cannot be in conflict.

The state's other claim of conflict is even weaker. The state asserts conflict with Mathews v. Eldridge. Petition at 10. That case developed a three-part test to determine if a particular social security disability proceeding afforded the claimant due process. It had nothing whatsoever to do with the processing of an indigent civil appeal from a

commitment order. The state has not demonstrated how the decision of the Florida Supreme Court is in conflict with Mathews.

Indeed, in Mathews, this Court quoted from its prior due process decisions and noted that " '[d]ue process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." ... "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Mathews, 424 U.S. at 335; citations omitted.

That is exactly the approach the Florida Supreme Court took in the instant case. That court examined the procedure for processing indigent civil commitment appeals and determined, as a matter of state policy, that the indigent patients were entitled to the same procedural due process safeguards as indigent criminal appellants. The policy decision of the Florida Supreme Court does not provide any federal basis for this Court to exercise its jurisdiction.

Just like the respondent in Pennsylvania v. Finley, the Florida Supreme Court's treatment of Ms. Pullen's appeal means that she "has received exactly what she is entitled to receive under state law." 481 U.S.

at 558. The state has not demonstrated any conflict with either prior decision of this Court.

CONCLUSION

The Respondent, Gloria Pullen, respectfully asks this Honorable Court to deny the Petition for Writ of Certiorari to the Supreme Court of Florida.

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No. 01-1180

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

STATE OF FLORIDA, Petitioner

vs.

GLORIA PULLEN, Respondent.

APPENDIX TO BRIEF OF RESPONDENT
IN OPPOSITION TO PETITION FOR CERTIORARI

APPENDIX	DOCUMENT
A	Pullen v. State, 802 So. 2d 1113 (Fla. 2001)

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802 So.2d 1113
26 Fla. L. Weekly S583, 26 Fla. L. Weekly S766
(Cite as: 802 So.2d 1113)

Supreme Court of Florida.

Gloria PULLEN, Petitioner,
v.
STATE of Florida, Respondent.

No. SC00-1482.

Sept. 13, 2001.
Rehearing Denied Nov. 15, 2001.

In involuntary civil commitment proceeding, the Division of Administrative Hearings, Diane Cleavinger, Administrative Law Judge, authorized patient's continued commitment. Patient appealed. The District Court of Appeal, 764 So.2d 704, dismissed appeal. On review, the Supreme Court, Harding, J., held that *Anders* procedure for withdrawal of counsel in criminal proceedings should apply to involuntary civil commitments under Baker Act.

Decision of District Court of Appeal quashed and remanded with directions.

Pariente, J., concurred in part and dissented in part and filed opinion in which Wells, C.J., and Quince, J., concurred.

West Headnotes

[1] Criminal Law k1077.3
110k1077.3

While United States Supreme Court will permit variations on *Anders* decision concerning withdrawal of appellate counsel in criminal context, procedures still must protect defendant's right to appellate counsel.

[2] Constitutional Law k251.5
92k251.5

[2] Constitutional Law k254.1
92k254.1

[2] Constitutional Law k277(1)
92k277(1)

Process to which individual is entitled depends on extent to which individual will be condemned to suffer grievous loss; question is not merely weight of individual's interest, but whether nature of interest is one within contemplation of "liberty or property" language of due process clause. U.S.C.A. Const.Amend. 14.

[3] Mental Health k41
257Ak41

Individual who faces involuntary civil commitment to mental health facility has a liberty interest at stake, and accordingly, individual has the right to effective assistance of counsel at all significant stages of commitment process, with significant stages meaning all judicial proceedings and any other official proceeding at which a decision is, or can be, made which may result in a detrimental change to conditions of individual's liberty. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law k311
92k311

In civil proceedings where the individual interests at stake are both particularly important and more substantial than mere loss of money, due process places a higher burden on state. U.S.C.A. Const.Amend. 14.

[5] Mental Health k37.1
257Ak37.1

[5] Prisons k4(1)
310k4(1)

Those whom state seeks to involuntarily commit to mental institution are entitled to protection of Constitutions, as are those incarcerated in correctional institutions.

[6] Appeal and Error k1
30k1

While Federal Constitution does not require states to create appellate review, constitutional constraints are imposed on state when it chooses to do so.

[7] Mental Health k41

257Ak41

Anders procedure for withdrawal of counsel in criminal proceedings should apply to Baker Act involuntary civil commitments; while right to appointed counsel in involuntary civil commitment proceedings is provided by statute, the constitutional guarantee of due process would require no less, the policies and interests served by *Anders* procedure in criminal proceedings are also present in involuntary civil commitments, namely, that resolution of appeal of commitment order be related to merits of appeal rather than to individual's ability to hire private counsel, and curtailment of fundamental right of liberty is implicated in both criminal proceedings and involuntary civil commitments. U.S.C.A. Const.Amend. 14; West's F.S.A. § 394.451 et seq.

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Robert A. Butterworth, Attorney General, and Charlie McCoy, Assistant Attorney General, Tallahassee, FL, for Respondent.

Julianne M. Holt, Public Defender, and Marcia Perlin, Assistant Public Defender, Thirteenth Judicial Circuit, Tampa, FL, for Florida Public Defender Association, Inc., Amicus Curiae.

HARDING, J.

We have for review a decision of a district court of appeal that affects a class of state or constitutional officers. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const.

Gloria Pullen appealed an order from the Division of Administrative Hearings authorizing her continued involuntary civil commitment under Florida's Baker Act. *See* §§ 394.451-394.4789, Fla. Stat. (2000). Pullen's appointed counsel from the public defender's office filed an *Anders* [FN1] brief, stating that he could discern no reversible error in the proceedings below. Despite being given the opportunity to file her own pro se brief, Pullen did not do so. The State filed a motion to dismiss the appeal, arguing that the *Anders* procedure does not apply to civil commitment proceedings. The First District Court of Appeal agreed and dismissed Pullen's appeal with a written opinion. *See Pullen v. State,* 764 So.2d 704 (Fla. 1st DCA 2000).

FN1. *Anders v. California,* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

The district court concluded that because *Anders* procedures are grounded in the Sixth Amendment right to counsel in criminal prosecutions while Baker Act proceedings are civil in nature and the right to counsel in such proceedings arises from the due process clause, *Anders* is inapplicable to appeals from involuntary civil commitment orders. The First District Court noted that the Fourth District Court had reached the same conclusion as to the inapplicability of *Anders* procedures in termination of parental rights (TPR) proceedings. *See Ostrum v. Dep't of Health & Rehabilitative Servs.*, 663 So.2d 1359 (Fla. 4th DCA 1995). The First District Court adopted the procedures outlined in *Ostrum*, i.e., where counsel conducts a conscientious review of the record and can find no meritorious grounds on which to appeal, counsel can move to withdraw on that basis and the court will give the pro se appellant an opportunity to file a brief; where the pro se appellant fails to do so, the case will be dismissed for failure to prosecute. *See Pullen,* 764 So.2d at 705. ***1115** Based on this procedure, the district court dismissed Pullen's appeal. *See id.*

Pullen sought review by this Court on two grounds: (1) the decision below expressly construes the due process and right to counsel provisions of the Florida and United States Constitutions; and (2) the decision expressly affects all public defenders who routinely represent indigent patients in Baker Act proceedings. *See* art. V, § 3(b)(3), Fla. Const. The Court granted review and heard oral argument from the parties in June 2001.

In *Anders v. California,* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), the United States Supreme Court addressed the duty of a court-appointed appellate counsel to prosecute a first appeal when the attorney has conscientiously determined that there is no merit to the indigent's appeal. The Supreme Court held that the procedure in such circumstances must ensure that the indigent defendant is furnished with counsel acting in the role of an advocate and that the appeal will be given the full consideration and resolution of the matter as is received when counsel is acting in that capacity. *See id.* at 743, 87 S.Ct. 1396. The Supreme Court concluded that a no-merit letter from counsel to the court does not suffice. Instead, the Supreme Court outlined the following procedure for appointed counsel to follow: if, after a conscientious examination of the case, counsel concludes that the case is wholly frivolous, counsel may request permission to withdraw; however, that request must be accompanied by a brief referring to anything in the record that might arguably support the

appeal and a copy of the brief should be furnished to the indigent defendant to permit him or her to raise any points he chooses; the court then makes a full examination of the proceedings to determine whether the case is wholly frivolous; if so, it may grant counsel permission to withdraw and either dismiss the case or proceed to a decision on the merits; if the appeal is not found frivolous, the court must provide the indigent with counsel to argue the appeal. *See id.* at 744, 87 S.Ct. 1396; *see also In re Anders Briefs,* 581 So.2d 149, 151 (Fla.1991) (explaining *Anders* procedure); *State v. Wooden,* 246 So.2d 755, 757-58 (Fla.1971) (stating that court-appointed counsel must follow *Anders* procedure in order to withdraw from direct appeal which he believes to be without merit).

In a recent opinion, the Supreme Court explained that the procedure outlined in *Anders* is not mandatory upon the states. *See Smith v. Robbins,* 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000) (holding that the *Anders* procedure is merely one method of satisfying the requirements of the Constitution for indigent criminal appeals). The Supreme Court explained that states may craft variations of the *Anders* procedure "so long as it reasonably ensures that an indigent's appeal will be resolved in a way that is related to the merit of that appeal." *Id.* at 276-77, 120 S.Ct. 746. In *Robbins,* the Supreme Court concluded that California's *Wende* [FN2] procedure, ***1116** which diverged from the *Anders* procedure, meets this standard. *See id.* at 279, 120 S.Ct. 746. In making this determination, the Court noted four ways in which alternative procedures have been judged inadequate: (1) if the procedure does not require either counsel or the appellate court to determine that the appeal is frivolous, but merely that the defendant is unlikely to prevail on appeal; (2) if the procedure permits an appellate court to allow counsel to withdraw and thereafter decide the appeal without appointing new counsel; (3) if the procedure permits counsel to file a no-merit letter stating only the "bare conclusion" that the appeal has no merit; and (4) if the procedure only provides for one tier of review. *See id.* at 761-62.

> FN2. *People v. Wende,* 25 Cal.3d 436, 158 Cal.Rptr. 839, 600 P.2d 1071 (1979). Under the *Wende* procedure, counsel, upon concluding that an appeal would be frivolous, files a brief with the appellate court that summarizes the procedural and factual history of the case, with citations to the record. Counsel also attests that he or she has reviewed the record, explained this evaluation of the case to the client, provided the client with a copy of the brief, and informed the client of the right to file a pro se supplemental brief. Counsel further requests that the court independently examine the record for arguable issues. Unlike the *Anders* procedure, counsel following the *Wende* procedure neither explicitly states that the review has led him or her to conclude that an appeal would be frivolous (although that is considered implicit) nor requests leave to withdraw. Instead, counsel is silent on the merits of the case and expresses availability to brief any issues on which the court might desire briefing. The appellate court, upon receiving a *Wende* brief, must conduct a review of the entire record, regardless of whether the defendant has filed a pro se brief. If the appellate court, after its review of the record pursuant to *Wende,* also finds the appeal to be frivolous, it may affirm. If, however, it finds an arguable (i.e., nonfrivolous) issue, it orders briefing on that issue. *See id.* at 1074-76; *see also Robbins,* 528 U.S. at 265, 120 S.Ct. 746 (explaining the *Wende* procedure).

[1] Thus, while the Supreme Court will permit variations on *Anders* in the criminal context, the procedures still must protect the defendant's right to appellate counsel. In a criminal context, a "no-merit" letter and withdrawal, such as the procedure used in the instant case, would clearly not be sufficient. *See id.*

[2] Thus, the real issue here is what procedure is required in the context of a civil appeal. The process to which an individual is entitled "depends on the extent to which [the] individual will be 'condemned to suffer grievous loss.' The question is not merely the 'weight' of the individual's interest, but whether the nature of the interest is one within the contemplation of the 'liberty or property' language of the Fourteenth Amendment." *Morrissey v. Brewer,* 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (addressing the applicability of due process to parole revocation proceedings).

[3] Clearly, an individual who faces involuntary commitment to a mental health facility has a liberty interest at stake. Accordingly, this Court has held that "[t]he subject of an involuntary civil commitment proceeding has the right to the effective assistance of counsel at all significant stages of the commitment process. By significant stages we mean all judicial proceedings and any other official proceeding at which a decision is, or can be, made which may result in a detrimental change to the conditions of the

subject's liberty." *In re Beverly,* 342 So.2d 481, 489 (Fla.1977) (citation omitted); *accord Jones v. State,* 611 So.2d 577, 579 (Fla. 1st DCA 1992).

In reaching the decision in the instant case, the district court relied upon the decision of the Fourth District Court in *Ostrum,* which involved an appeal following the termination of parental rights. *See* 663 So.2d at 1360. After Ostrum's attorney filed a motion to withdraw accompanied by an *Anders* brief, the Department of Health and Rehabilitative Services filed a motion to dismiss the appeal based upon the *Anders* brief and the court's policy of expeditiously resolving cases involving the interests of children. *See id.* at 1361. The Fourth District Court granted the attorney's motion to withdraw and summarily affirmed the termination of parental rights order. *See id.* at 1361-62. The district court explained that the *Anders* procedures do not apply to appeals from termination ***1117** of parental rights proceedings for the following reasons: (1) the right to counsel in *Anders* is based on the Sixth Amendment right to counsel in criminal proceedings, while the right to counsel in civil TPR proceedings is derived from the constitutional guarantee of due process; (2) applying the full panoply of *Anders* procedures would delay proceedings to determine the future of the children who are the subject of the TPR proceedings; (3) *Anders* requires the appellate court to leave its neutral role and serve as advocate for the party whose counsel seeks to withdraw; and (4) the appellant can file a pro se brief after counsel files the motion to withdraw. *See id.* at 1361.

Citing the first reason in *Ostrum,* the district court in the instant case concluded that *Anders* is not applicable to Baker Act appeals because they are not criminal in nature and the right of counsel in such proceedings is derived from the constitutional right to due process rather than the Sixth Amendment right to counsel protected by *Anders. See Pullen,* 764 So.2d at 705. The district court adopted the *Ostrum* procedure in appeals from involuntary civil commitments under the Baker Act. *See id.* Thus, under the procedure adopted by the *Pullen* court, counsel may move to withdraw on the basis that he or she has conducted a conscientious review of the record and found no meritorious grounds on which to appeal; the appellate court need not conduct an independent review of the record; and the appellant will be given an opportunity to file a pro se brief. *See id.*

[4][5] While *Anders* involved an indigent *criminal* defendant, the United States Supreme Court expressed an overriding concern for "substantial equality and fair process" in the appellate process. *Anders,* 386 U.S. at 744, 87 S.Ct. 1396. The Supreme Court noted that a long line of cases have addressed "discrimination against the indigent defendant on his first appeal" and concluded that "equal justice was not afforded an indigent appellant where the nature of the review 'depends on the amount of money he has.' " *Id.* at 741, 87 S.Ct. 1396. Additionally, as the Supreme Court explained in *Robbins,* the line of cases dealing with an indigent's right to appellate counsel derive support from both the equal protection and due process clauses, which "as a practical matter, ... largely converge to require that a State's procedure 'afford adequate and effective appellate review to indigent defendants. A State's procedure provides such review so long as it reasonably ensures that an indigent's appeal will be resolved in a way that is related to the merit of that appeal.' " *Robbins,* 528 U.S. at 276-77, 120 S.Ct. 746 (citation omitted). Furthermore, in civil proceedings where the "individual interests at stake ... are both 'particularly important' and 'more substantial than mere loss of money,' " due process places a higher burden on the state. *Santosky v. Kramer,* 455 U.S. 745, 756, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (termination of parental rights); *see also Addington v. Texas,* 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979) (involuntary commitment); *Woodby v. INS,* 385 U.S. 276, 87 S.Ct. 483, 17 L.Ed.2d 362 (1966) (deportation); *Schneiderman v. United States,* 320 U.S. 118, 63 S.Ct. 1333, 87 L.Ed. 1796 (1943) (denaturalization). As this Court has explained, "[t]he deprivation of liberty which results from confinement under a state's involuntary commitment law has been termed a 'massive curtailment of liberty.' " *Shuman v. State,* 358 So.2d 1333, 1335 (Fla.1978) (quoting *Humphrey v. Cady,* 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972)). "Those whom the state seeks to involuntarily commit to a mental institution are entitled to the protection of our Constitutions, as are ***1118** those incarcerated in our correctional institutions." *Id.* As the Supreme Court warned in *Anders,* "[t]he constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus curiae." 386 U.S. at 744, 87 S.Ct. 1396.

[6] The United States Supreme Court has not addressed the applicability of *Anders* to those civil proceedings in which a state has determined that an indigent party is entitled to appointed appellate counsel. While the federal Constitution does not require the states to create appellate review, *see Robbins,* 528 U.S. at 270 n. 5, 120 S.Ct. 746, constitutional constraints are imposed on the state

when it chooses to do so. *See id.* at 270, 120 S.Ct. 746. Neither this Court nor the United States Supreme Court has addressed the applicability of the *Anders* procedures to civil proceedings such as these, i.e., where the "individual interests at stake ... are both 'particularly important' and 'more substantial than mere loss of money.' " *Santosky v. Kramer*, 455 U.S. at 756, 102 S.Ct. 1388. In Florida, several district courts have addressed this issue and concluded that *Anders* does not apply to appeals in various proceedings where the right to counsel arises from the due process clause. *See, e.g., Ostrum v. Dep't of Health & Rehabilitative Servs.*, 663 So.2d 1359 (Fla. 4th DCA 1995) (termination of parental rights); *Jimenez v. Dep't of Health & Rehabilitative Servs.*, 669 So.2d 340 (Fla. 3d DCA 1996) (same); *In re J.A.*, 693 So.2d 723 (Fla. 5th DCA 1997) (same); *In re K.W.*, 779 So.2d 292 (Fla. 2d DCA 1998) (same); *Gantt v. State*, 714 So.2d 1116 (Fla. 4th DCA 1998) (noncapital postconviction proceeding where court exercised discretion to appoint public defender); *Pullen v. State*, 764 So.2d 704 (Fla. 1st DCA 2000) (involuntary civil commitment).

Other states that have addressed the application of *Anders* to civil proceedings have come to varying conclusions. Some have held that *Anders* is applicable to termination of parental rights or similar proceedings. *See J.K. v. Lee County Dep't of Human Res.*, 668 So.2d 813 (Ala.Civ.App.1995) (juvenile dependency proceeding); *In re Keller*, 138 Ill.App.3d 746, 93 Ill.Dec. 190, 486 N.E.2d 291 (1985); *In re Christopher B.*, No. L99-1065, 2000 WL 281739 (Ohio Ct.App. Mar. 17, 2000); *In re D.C. & L.C.*, 963 P.2d 761 (Utah Ct.App.1998). Others have not applied *Anders* to such proceedings. *See Denise H. v. Arizona Dep't of Econ. Sec.*, 193 Ariz. 257, 972 P.2d 241 (Ct.App.1998); *In re Sade C.*, 13 Cal.4th 952, 55 Cal.Rptr.2d 771, 920 P.2d 716 (1996); *In re Harrison*, 136 N.C.App. 831, 526 S.E.2d 502 (2000). Some states have applied *Anders* to involuntary civil commitment proceedings. *See In re McQueen*, 145 Ill.App.3d 148, 99 Ill.Dec. 63, 495 N.E.2d 128 (1986) (applying to involuntary civil commitment); *In re E.M.*, No. 03-96-00703-CV, 1997 WL 217186 (Tex.App. May 1, 1997) (applying *Anders* analysis by analogy to involuntary civil commitment without holding that it is necessary); *Jeffrey M. v. Milwaukee County*, 185 Wis.2d 712, 520 N.W.2d 112 (Ct.App.1994) (applying to involuntary civil commitment). Other states have not. *See In re Leon G.*, 26 P.3d 481, (Ariz.2001) (finding *Anders* not applicable to involuntary commitment under sexually violent predator act); *In re Richard A.*, 771 A.2d 572 (N.H.2001) (not applying state alternative to *Anders* procedure in involuntary commitment proceedings).

In most cases where *Anders* has not been extended to civil proceedings, the courts have noted that *Anders* derives from the constitutional right to counsel in ***1119** criminal proceedings. *See, e.g., In re Leon G.*, 26 P.3d at 483-84, ("The right to full review of the record on appeal when appointed counsel files an Anders brief, attached as it is to the Sixth Amendment right to counsel in criminal cases, does not apply in civil proceedings."); *Denise H.*, 972 P.2d at 243 ("The right to file an *Anders* brief derives from the Sixth Amendment right to counsel, which applies to persons 'accused' in 'criminal prosecutions.' "); *County of Kern v. Dillier*, 69 Cal.App.4th 1412, 82 Cal.Rptr.2d 318, 322 (1999) (stating that "*Anders's* 'prophylactic' procedures are designed solely to protect the indigent criminal defendant's right ... to the assistance of appellate counsel appointed by the state" and thus are not applicable to termination of parental rights proceedings); *In re Richard A.*, 771 A.2d at 576 (holding that New Hampshire's alternative to *Anders* procedures, which are required in criminal cases, do not apply to an involuntary civil commitment case because individuals subject to civil commitment "are not entitled to the same level of due process as individuals subject to incarceration for criminal wrongdoing"). Conversely, those courts that have applied *Anders*-type procedures to civil proceedings have focused on the similarities between the proceedings and the rights at issue. *See, e.g., In re Keller*, 93 Ill.Dec. 190, 486 N.E.2d at 292 (finding that application of *Anders* procedure in appeal of termination of parental rights puts "indigent appellants on the same footing as those able to afford private counsel and accomplishes the constitutional or statutory purpose for their appointment"); *In re McQueen*, 99 Ill.Dec. 63, 495 N.E.2d at 129 (same as to involuntary civil commitment proceedings); *In re D.C. & L.C.*, 963 P.2d at 763-64 (noting that the right to counsel is statutorily guaranteed in appeal of termination of parental rights, that court-appointed counsel owes same duties to client as in criminal proceeding, and that counsel faces same ethical dilemma between representation of client and bar rule prohibiting frivolous claims).

[7] While the right to appointed counsel in Baker Act involuntary civil commitment proceedings is provided by Florida statute, [FN3] the constitutional guarantee of due process would require no less. *See Lynch v. Baxley*, 386 F.Supp. 378, 388 (M.D.Ala.1974) (stating that due process applies to involuntary civil commitments and requires that the person who is the subject of the commitment proceeding be represented by counsel, appointed if necessary); *In re Beverly*, 342 So.2d 481, 489 (Fla.1977) ("The subject of an involuntary civil commitment proceeding has the right

to the effective assistance of counsel at all significant stages of the commitment process."). While the United States Supreme Court has never ruled that *Anders* procedures are required in the civil context, we agree with the courts cited above that the policies and interests served by the *Anders* procedure in criminal proceedings are also present in involuntary civil commitments under Florida's Baker Act, namely, that the resolution of an appeal of the commitment order be related to the merits of the appeal rather than to the individual's ability to hire private counsel. *Cf. Robbins*, 528 U.S. at 276-77, 120 S.Ct. 746 (stating that due process requires state appellate process to provide fair opportunity for indigent's appeal to be resolved on the merits). Further, the curtailment of the fundamental right of liberty is implicated in both criminal proceedings and involuntary civil commitments. *See Shuman v. State*, 358 So.2d 1333, 1335 (Fla.1978).

FN3. *See* § 394.467(4), Fla. Stat. (2000).

***1120** The State noted in both its brief and at oral argument that civil commitment hearings under the Baker Act are "usually brief and factually straightforward" and "[v]ery rarely is the person's mental illness contested." Instead, the State contends, "the most common points on appeal" assert that evidence as to the person's likelihood to harm himself or others does not meet the clear and convincing standard. Thus, we do not agree with the State's contention that the independent appellate court review which is part of the *Anders*-type procedure will cause an undue burden to the court or result in unnecessary delay.

While we determine that the *Anders* procedure should apply to involuntary civil commitments, we are concerned that it may be a hollow remedy for those appellants who pursue an *Anders* appeal. At oral argument, the parties recognized that under the present time frame the appeals process often exceeds the six-month commitment period. *See* Fla R.App. P. 9.110 (governing appeal proceedings to review final orders of lower tribunals, including the time for filing the notice of appeal, preparation of the record by the clerk, and serving the initial brief), 9.210(f) (governing the time for service of answer and reply briefs). In fact, this delay would also occur in cases where counsel files an arguably meritorious appeal of a civil commitment order under the Baker Act.

In light of this time frame, we request the Appellate Rules Committee to consider the adoption of expedited procedures for the appeal of civil commitment orders under the Baker Act. Procedures that the committee should consider include, but are not limited to, an expedited time frame for the filing of the notice of appeal, a shortened time for the serving of briefs, and a provision requiring the appointment of a guardian ad litem.

For the reasons expressed above, we quash the decision of the First District Court of Appeal and remand this case to the district court with directions to consider Pullen's appeal under the *Anders* procedures outlined in this opinion.

It is so ordered.

SHAW, ANSTEAD, and LEWIS, JJ., concur.

PARIENTE, J., concurs in part and dissents in part with an opinion, in which WELLS, C.J., and QUINCE, J., concur.

PARIENTE, J., concurring in part and dissenting in part.

I wholeheartedly concur in the majority's concern over the need for expedited procedures for appeal of civil commitment orders under the Baker Act and, in particular, a provision requiring the appointment of a guardian ad litem. I do not, however, concur with the extension of the *Anders* procedure [FN4] to Baker Act civil commitment proceedings, especially after appellate counsel has certified that he or she has conducted a conscientious review of the record and could find no meritorious grounds on which to appeal. The majority would have this good faith certification by appellate counsel trigger a responsibility on the part of the appellate court "to conduct a full and independent review of the record to discover any arguable issues apparent on the face of the record" as is now required by our *Anders* procedure in criminal appeals. *See In re Anders Briefs*, 581 So.2d 149, 151 (Fla.1991). Instead, I would find any additional review by the appellate court to perform an independent ***1121** verification that no meritorious points exist to be unnecessary in light of the good faith certification procedure.

FN4. "*Anders* procedure" refers to the procedure described in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and elaborated in our decision of *In re Anders Briefs*, 581 So.2d 149 (Fla.1991).

Indeed, I have substantial doubts about the necessity of our current *Anders* procedure in the criminal context. [FN5] I have never understood the logic of requiring appellate courts to provide a heightened

review for those appeals that are the least meritorious by placing on the appellate courts the responsibility of searching the record for potential errors. [FN6]

FN5. For a discussion of the shortcomings of the *Anders* approach, see Martha C. Warner, *Anders in the Fifty States: Some Appellants' Equal Protection is More Equal than Others'*, 23 Fla. St. U.L.Rev. 625 (1996).

FN6. This procedure applies only to court-appointed lawyers--either appellate public defenders or conflict counsel. However, privately retained lawyers are ethically bound not to prosecute an appeal that is wholly frivolous.

Given these reservations about our current *Anders* procedures, in my opinion, extending the *Anders* procedure to Baker Act proceedings is an unnecessary and unwarranted use of judicial resources. Further, we have no information as to what effect extending *Anders* to Baker Act civil commitment appeals would have on the appellate workload.

I hasten to add that I do not minimize the significant deprivation of liberty resulting from an involuntary commitment. In my opinion, however, the very safeguards attendant to the Baker Act proceedings, including the right to appellate review, the appointment of appellate counsel to determine any procedural or substantive irregularities in the commitment, and the maximum duration of a six-month period of commitment before another review, comport with due process. Considering the three-factor test of *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), I would find no due process deprivation. [FN7] I would rely instead on the certification of counsel. Moreover, rather than extending *Anders* to Baker Act civil commitment proceedings, I would consider revisiting the wisdom and necessity of our current *Anders* procedures in criminal cases.

FN7. *Eldridge* sets forth a three-factor test to determine whether the Due Process Clause of the Fourteenth Amendment mandates additional procedures. It instructs that we look to (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation through the procedures used and probable value of substitute procedures; and (3) the Government's interest, including the fiscal and administrative burden of substitute procedures. *See* 424 U.S. at 335, 96 S.Ct. 893.

WELLS, C.J., and QUINCE, J., concur.

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